

## ***Natural Resources Defense Council • NY/NJ Baykeeper***

February 8, 2008

Mr. Doug Tomchuk  
EPA Region 2  
290 Broadway, 19th Floor  
New York, NY 10007

### **Re: Contaminated Sediments Technical Advisory Group (CSTAG) Stakeholder Presentations**

Dear Mr. Tomchuk,

Thank you for the invitations you extended to Natural Resources Defense Council and NY/NJ Baykeeper to make a presentation at the upcoming meeting of the CSTAG concerning the Passaic River Superfund Site. Due to prior travel commitments, we regret that we will be unable to attend in person to make a presentation. However, we write to offer the following brief comments relevant to the CSTAG review and ask that you pass on this letter to the CSTAG members.

1. Draft Source Control Early Action Focused Feasibility Study (“Draft FFS”): Although any serious consideration of an Early Action cleanup of the most contaminated stretch of the river has taken far too long – over ten years elapsed between the 1994 designation of the Passaic River Study Area as part of the Diamond Alkali Site and the start of serious work on the Draft FFS – we strongly support current efforts to select and implement a cleanup plan for the lower eight miles of the river, which have long been known to be the most contaminated portion of the river and among the most severely contaminated dioxin sites in the world. With respect to the specific alternatives analyzed in the Draft FFS, we suggest that the CSTAG should focus on what appears to be an implicit assumption of the Draft FFS, that dredging and capping are roughly equivalent with respect to their effectiveness at reducing human and ecological risk. The FFS presents little or no evidence to support this assumption. Based on EPA’s experience at other sites, such as the nearby Hudson River PCBs Site, we believe the Final FFS and the Proposed Plan that accompanies it should reflect a preference for dredging over capping, to ensure the effectiveness and longevity of the remedy.
2. Role of the PRPs in conducting the remainder of the RI/FS for the overall 17-mile Lower Passaic River Study Area: In March 2004, EPA expanded the scope of the site to include the entire 17-mile length of the Lower Passaic. In so doing, EPA also re-assigned lead responsibility for conducting the field work, modeling, risk assessments, and other technical analyses to itself – rather than to the PRPs, as had been the case for ten years under a 1994 Administrative Order on Consent (“AOC”) with Occidental Chemical Corporation. This was a welcome change, as Occidental (through Tierra Solutions, Inc.) had consistently used its lead role during the preceding decade to further its interests in

delay and obfuscation, rather than the prompt, scientifically sound study and remediation of the site. In May 2007, however, EPA entered into a revised AOC with the Cooperating Parties Group ("CPG") (consisting of dozens of PRPs) that returned to the PRPs the lead role for performing all aspects of the RI/FS. This is sure to slow the completion of the RI/FS and to reduce its quality. In fact, the AOC itself replaces prior EPA timelines indicating a 2012 target date for issuing a ROD (*i.e.*, following completion of the RI/FS) with a requirement to complete the RI/FS "as soon as practicable," on a schedule to be proposed *by the PRPs* subject to approval by EPA.

Modeling and risk assessment, especially, rely on a host of critical assumptions that can be manipulated to drive the results in one direction or another. The PRPs should not be tasked with this work. It will be, at best, extremely inefficient and, at worst, impossible for EPA to adequately supervise the PRPs' performance of these sensitive tasks to ensure they are entirely unbiased.

Further, by assigning the lead role to the PRPs and relegating EPA to an oversight role, the 2007 AOC also vested the PRPs with new rights to invoke dispute resolution procedures when they disagree with EPA's evaluation of their work. As we have learned, unfortunately, from our experience with the Hudson River PCBs Superfund Site, such dispute resolution processes create endless opportunities for PRPs to cause unnecessary and extensive delays and divert EPA staff and resources from more critical tasks.

Finally, because the modeling efforts for the Passaic River and the Newark Bay Study Area portion of the Superfund Site are integrally linked, the inevitable effect of the 2007 Passaic ACO will be to remove EPA from the lead role in the modeling efforts for Newark Bay as well, handing that responsibility over to the PRPs and replicating the flaws of the Passaic process. This will undermine key provisions of the February 2004 AOC that created the Newark Bay Study Area, which assigned to EPA the responsibility for performing all modeling and risk assessment tasks.

In sum, we call on the CSTAG to examine whether the roles that have been assigned to EPA and the CPG are appropriate to ensure scientifically valid collection and analysis of data that can lead to the timely selection and implementation of a remedy that is fully protective of public health and can support the equitable apportionment of liability for cleanup costs to the parties most directly responsible for contaminating the Passaic River and Newark Bay.

3. Public participation: The periodic Project Delivery Team ("PDT") meetings and issue-specific working group meetings, supplemented by email announcements between meetings, has been very helpful in creating a degree of transparency in the process. However, as most of the work on the RI/FS is highly technical in nature, genuine participation is not possible for the vast majority of the public without the aid of independent technical expertise, such as that which is typically funded by Technical Assistance Grants. The CSTAG should consider how TAG funding can more effectively be used to promote genuine public involvement in complex environmental decisions concerning the site.

Additionally, we note that EPA has assembled a distinguished group of outside scientists to serve on a Technical Advisory Committee ("TAC") for peer review purposes. However, the views of the TAC – or even the extent to which it has been consulted – have not been consistently shared with the public through the PDT or otherwise. If the results of TAC reviews are available to the CPG, they should be routinely be made available to the public as well. At a minimum, the public should be kept informed of the extent to which EPA is consulting with the TAC, and on what issues.

Last, we note that the Newark Bay Study Area portion of the site does not currently have a PDT or any other comparable mechanism for routinely involving the public in the RI/FS for Newark Bay. The CSTAG should propose the creation of a Newark Bay Study Area PDT, with general meetings and working groups open to the public.

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We would like to thank the CSTAG members for their consideration of these comments. Please feel free to contact us to discuss any of these matters further.

Sincerely,



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